HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 214 of 2004 (M/S)

Munni Lal

VS

Deepak Bharti & others

Approved for reporting.

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~~Not approved~~ for reporting

Date of decision 15.10.2004

Initial of Judge

Reserved

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 214 of 2004 (MS)

Munni Lal ..... Petitioner

Versus

Deepak Bharti &
others ..... Respondents

Sri Pankaj Miglani for the petitioner
Standing counsel for the respondents.

Dated: October 15, 2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 10.03.2004, whereby the application moved by the plaintiff for amendment has been allowed.

Briefly stated the facts giving rise to the present writ petition are that respondents no.1 to 5 filed a suit for declaration against the petitioner as well as respondents no.6 and 7 praying therein for a decree of declaration and further restraining the defendants from reconstructing or altering the property in dispute. During the pendency of the suit the plaintiffs have filed an application under Order VI Rule XVII C.P.C. seeking amendment in the plaint. The trial Court has

allowed the application vide impugned order, against which the present writ petition has been filed.

Orde VI Rule 17 C.P.C. relates to the amendment of pleadings. Rule 17 has further been amended and substituted by the C.P.C. (Amendment) Act 2002 with effect from 1.7.2002. The original Rule 17 was as under:

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Thereafter by way of amendment the following has been substituted w.e.f. 1.7.2002.

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

Sri Pankaj Miglani has submitted that the amendment will change the nature of the suit and further the amended pleading is barred by the provisions of Order 2 Rule 2 C.P.C.

It is settled law that at the time of allowing of amendment, the Court has only to look as to whether the ingredients of Order VI Rule 17 are satisfied or not. Rule 17 is very much clear it provides that amendment can be allowed at any stage of

proceedings on such terms as may be just, there is no quarrel with the propostition that the amendment was sought at the trial stage and that too without changing the nature of the suit.

Order 6 Rule 17 has been interpreted by the Hon'ble Supreme Court in various decisions and the Apex Court has given guide lines for the law courts that the courts while deciding such prayers should not adopt a hypertechnical view. In *B.K. Narayan Pillai vs. Parameswaran Pillai and another (2000) 1 SC Cases 712.* It has been held that technicalities of law should not be permitted to hamper the court in administration of justice between the parties.

Amendments are allowed in the pleadings to avoid uncalled multiplicities of litigation.

Admittedly in the present case cause of action which the plaintiff has pleaded is declaration in his favour. Either in the original pleadings or in the amended pleadings the plaintiff is not changing the cause of action. The cause of action being the same i.e. declaration, therefore, it is a fit case where the technicalities of law should not be permitted to hamper the court in administration of justice and further that in order to avoid uncalled multiplicity of litigation the amendment has to be allowed.

The intention behind the amendment is two fold; one to avoid multiplicity of litigation and another to minimise litigation. In the case *Raghu Thilak D. John vs. S. Rayappan And others (2001) 2 S.C. Cases 472* the Apex Court has held as under:

"If the aforesaid test is applied in the instant case, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averment made in paras 8 (a) to 8(f) of the plaint which were sought to be incorporated by way of amendment. We feel that in the circumstances of the case the plea of limitation being disputed could be made a subject matter of the issue after allowing the amendment prayed for."

The expression 'cause of action' has also been interpreted in the case of B.K. Narayan Pillai (supra) where the apex court after refering the judgment of Cooke vs. Gill (1873) 8 CP 107 has held that the expression "*cause of* action' in the present context does not mean 'every fact which is material to be proved to entitle the plaintiff to succed'. The relevant observations of the apex court are as under:

The expression 'cause of action' in the present context does not mean 'every fact which it is material to be proved to entitle the plaintiff to succeed' as was said in Cooke vs. Gill in a different context, for if it were so ,no material fact could every be amended or added and, of course no one would want to change or add an immaterial allegation by amendment. The expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in Robinson v. Unicos Property Corpn. Ltd and it seems to us to be the only possible view to take. Any other view would made the rule futile. The wods 'new case' have been

understood to mean 'new set of ideas' Dornan vs. J.W. Ellis and Co. Ltd; . his also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time.

Thus in my opinion in order to do substantial justice between the parties as well as for the purpose of determining the real question in controversy between the parties the amendment sought by the plaintiffs has rightly been allowed.

I find no infirmity in the order passed by the Addl. District Judge, Haridwar. The writ petition lacks merit and is hereby dismissed. No order as to costs.

(Rajesh Tandon, J.)

October 15, 2004